

**MINUTES**  
**YORK COUNTY PLANNING COMMISSION**  
Regular Meeting  
York Hall, 301 Main Street  
July 12, 2006

**MEMBERS**  
Christopher A. Abel  
Nicholas F. Barba  
Anne C. H. Conner  
John R. Davis  
Alexander T. Hamilton  
Alfred E. Ptasznik, Jr.  
John W. Staton

**CALL TO ORDER**

Chair Alfred E. Ptasznik, Jr. called the meeting to order at 7:00 PM.

**ELECTION OF OFFICERS FOR 2006-2007**

Chair Ptasznik made a motion to move agenda item No. 2, Election of Officers for 2006-2007, to item No. 8, New Business. The motion was approved unanimously (6:0, Ms. Conner absent).

**ROLL CALL**

The roll was called and all members were present except Ms. Conner. Staff members present were J. Mark Carter, James E. Barnett, Jr., Timothy C. Cross, Amy Parker, and Earl W. Anderson.

**APPROVAL OF MINUTES**

Mr. Hamilton moved and the Commission approved unanimously (6:0) adoption of minutes of the regular meeting June 14, 2006.

**CITIZEN COMMENTS**

There were no citizen comments.

**PUBLIC HEARINGS**

**Application No. ZM-104-06, York County Board of Supervisors:** Amend the York County Zoning Map by reclassifying various parcels, located throughout York County and proposed to be reclassified in accordance with the updated Comprehensive Plan adopted on December 6, 2005. Titled *Charting the Course to 2025*, the Comprehensive Plan is the long-range plan for the physical development of the County.

**Timothy C. Cross, AICP**, Principal Planner, advised that staff received more than 40 replies or comments, including telephone, email or otherwise, related to the notification letters sent to all of the owners of property designated for possible rezoning. Copies of the staff contact log and the citizen

letters have been made available to the Commission, he noted. Mr. Cross recommended the Commission conduct the public hearing and receive public comments instead of having staff present a detailed and protracted presentation, after which the staff would answer questions that might arise about particular areas and the Commission could undertake detailed discussions and deliberation.

**Chair Ptasznik** agreed, and he opened the public hearing.

**Mr. Charlie Agee**, 13 Runswick Drive, Richmond, represented Philip Morris, USA. He did not think rezoning their property from IL (Limited Industrial) to EO (Economic Opportunity) would be in the best interest of Philip Morris USA and requested that no zoning change be approved for the property.

**Mr. Clarence A. Lee**, 409 Old York Hampton Highway, expressed concern about rezoning his property but wanted more details, such as the specific plans and the timetable for rezoning.

**Mr. Stephen C. Barrs**, 209 Sylvia Drive, represented C. A. Barrs Contractors and Yorktown Materials, 7438 George Washington Memorial (GWM) Highway, and addressed the potential rezoning of 7438, 7505, 7517, 7521, 7529 and 7437 GWM Highway. Mr. Barrs noted that C. A. Barrs Contractors, a road contractor, has operated at 7429 GWM Highway for 34 years and shares the property with Yorktown Materials, Aggregate and Construction Materials, also owned by the Barrs family. The companies employ 90 people and operate on 27 acres comprised of a collection of 14 acres on which there are nine buildings, a stone yard, rail siding, offloading facility, conveyor, and materials handling equipment. The property abutting Route 17 is well maintained. He wanted the zoning to remain unchanged to allow the uses conducted on the property for the past 34 years to be continued.

**Ms. Susan B. Hancock**, Chief Financial Officer, C. A. Barrs, Contractor, reported that the contractor paid \$94,000 in real estate taxes for industrial use of the subject parcels for FY2005, and other users on the property had paid \$32,000 for the same period. She predicted combined taxes for FY 2006 for the businesses will exceed \$110,000. She requested the Barrs properties remain zoned IL to permit the owners to maintain the historical use of the properties.

**Mr. Carl A. Barrs**, 833 Railway Road, said he has been a contractor in York County for over 30 years, having created an industrial complex in proximity to a railroad crossing. He said his operation is not a public nuisance. Mr. Barrs said some of the parcels that comprise his 27 acres have been rezoned two times during his ownership. He said his business operation is in total compliance with the stated purposes of the IL zoning district, and to rezone any of the parcels to GB (General Business) would introduce restrictions on future uses. He requested that they not be rezoned.

**Mr. William C. Green**, 431 Spivey Lane, owns parcels at 431 and 424 Spivey Lane. Mr. Green believed the Comprehensive Plan to be generally flawed because there was not enough citizen input and it is "no more than a feel-good document." Mr. Green was concerned that much of Seaford was proposed for "downzoning" and, if that were to occur, the properties would be devalued, resulting in a loss in the County's tax base. It appeared to him that his half-acre parcels would be treated under the Zoning Ordinance the same as five acres, if his were rezoned from RR (Rural Residential) to RC (Resource Conservation), and would necessitate the Board of Supervisors' approval for him to rebuild if more than 60% of the value of his property was destroyed. He opposed rezoning his property.

**Mr. Frank Alvarado**, 710 Tidemill Road, owns property adjoining the Rodgers Smith boat landing and asked whether his right to build a residence would be affected by the County boat landing property being rezoned from RR to RC.

**Dr. Roger Schultz**, 6413 Conservancy Road, Williamsburg, VA, spoke about the proposed rezoning of his property at 6270 Old Mooretown Road from EO to RR. The parcel is located behind another parcel that he owns at 6268 Old Mooretown Road and provides the sole access to 6268 Old Mooretown Road. Both parcels were zoned EO when he purchased them with the intent of establishing a medical office or facility at 6268 Old Mooretown Road. He asked to retain the EO zoning of 6270 Old Mooretown Road to maintain access from that property to the property at 6268 Old Mooretown Road.

**Dr. Schultz** added that **Ms. Cong T. Camp** (6320 Old Mooretown Road) and **Ms. Robert J. Rojas** (6280, 6282, 6284 Old Mooretown Road) asked him to speak on their behalf against rezoning their properties from EO to RR.

**Mr. Bobby D. Ashe**, 402 Cheadle Loop Road, Seaford, said while he would not be affected by the proposal, he spoke in behalf of his friends and neighbors whose properties would be downzoned after they have paid taxes on their property for many years. He was opposed to downzoning of private property.

**Mr. Howard J. Osborn**, 3601 Seaford Road, owns approximately 28 acres (3600, 3601 Seaford Road) proposed to be rezoned from RR to RC. He expressed strong opposition to this comprehensive rezoning on the basis of inadequate public input, and further cited Constitutional Amendments V and XIV regarding taking of private property for public use without due process. He did not understand why such a wide-ranging proposal was not submitted to the voters in a referendum. Mr. Osborn estimated his personal loss in property value at \$1 million if his properties were rezoned as proposed. He said he would present his arguments to higher authority, including the U. S. Supreme Court, if necessary.

**Mr. Wallace Smith**, 815 Railway Road, questioned the rationale for rezoning his 2.5-acre property from WCI (Water-oriented Commercial/Industrial) to RR when properties surrounding him are not zoned for residential use. His property would be more valuable to him if it retained the current zoning.

**Mr. James M. Hall**, 109 Warehams Point, Williamsburg, owns adjoining properties located at 7438 GWM and 511 Old York-Hampton Highway which currently support three single family residences. Mr. Hall supported the proposal to rezone the properties from IL to GB.

**Mr. Carlton Moore**, 507 Wildey Road, said he agreed with Mr. William Green, who spoke earlier. Mr. Moore questioned the purpose of the comprehensive rezoning and what effect it would have if an event beyond their control required him or his neighbors to replace their homes. He asked why Dandy and Cheadle Loop areas had been left out of the proposal. Mr. Moore also registered his disappointment that the County had not been more diligent in clearing trash and debris that tended to gather on his property "from the other properties way up the line."

**Ms. Marie St. Clair**, 308 Wildey Road, did not want her property rezoned because it would prevent her from subdividing her lot, and she would expect the same consideration that is given to developers.

**Mr. Dick Ashe**, 307 Shackelford Road, was opposed to his property on Shirley Road in Seaford being rezoned from WCI to RR because there is a scarcity of developable WCI property in the County. He said his property has no residences around it and is well situated for WCI use. Mr. Ashe also opposed the property he owns on Hansford Lane being rezoned from RR to RC because he believed it would significantly devalue the property. It was his understanding that the rezoning was recommended because of the hazards of a hurricane, but he believed that any rebuilding that abided by the regulations within the Virginia Statewide Building Code should effectively address any concerns about rebuilding after a weather-related disaster. Mr. Ashe questioned staff's concerns about access to WCI-zoned land, because a developer would be required to undertake traffic studies and comply with the resulting recommendations. A nine-foot-deep channel provides water access to his property, he added. He could not envision a better place in the County for the WCI zoning, and considered the proposed zoning of his Shirley Road property from WCI to RR to be unjustified, unfair and unreasonable.

**Mr. Mark A. Ashe**, 507 Sparrer Road, said he was a lifelong resident of Seaford, where there are many family subdivisions, some of which are no more than three acres in size. It was his opinion that to rezone as proposed would deprive the landowners of their property and their rights.

**Mr. Robert E. Schlegel**, 7720 Glenroie Avenue, Norfolk, spoke about his 172-acre parcel of land on Claxton Creek known as "Green Point." He had purchased two extra lots to provide egress to his land, he said, and now some of his property is proposed for rezoning. Mr. Schlegel's property is currently zoned for aquaculture and he invested more than \$30,000 in an unsuccessful attempt to raise clams and oysters. He believed the property to be worth more zoned RR than it would be if rezoned to the proposed RC. Mr. Schlegel said landowners face enough red tape in attempting to return a profit on their land. He believed the County could be facing a legal problem.

**Ms. Carolyn Baker**, 6290 Old Mooretown Road, spoke about 11 parcels on Mooretown Road that are proposed to be rezoned from EO to RR. Ms. Baker said the property owners of eight of those parcels (not identified) request to be rezoned to "RR20." She believed that classification would provide the owners better opportunities to use their land as they wish, such as subdividing. She acknowledged that some owners of property closer to the hospital might be better served by retaining the EO zoning, as some have requested.

**Mr. John Robie**, 136 Ruth Lane, Williamsburg, Realtor, Duval Realty, said he had advised Dr. Schultz before Dr. Schultz's purchase of the property at 6270 Mooretown Road. He believed that when the property was first rezoned to EO and nobody spoke against that, the perception was it would remain EO. Mr. Robie did not think it proper to rezone property from EO, thus reducing its value, when the assumption was that it could be developed as commercial property. He thought it was important for the County to recognize that a purchaser of EO property would not expect the County to do anything that resulted in devaluing the property.

**Mr. Carroll Fulks**, 423 Airport Road, said that he lives next to Waller Mill Park and the proposal to rezone his property to RC does not seem to matter since he would not be able to develop next to the watershed anyway. He also expressed reservations about the comprehensive rezoning process and suggested that staff contact each property owner whose property is targeted for possible rezoning. Mr. Fulks did not think the majority of property owners were in favor of rezoning their properties.

**Mr. Ptasznik** asked if there were others who had not signed up or who wished to speak. Hearing none, he closed the public hearing.

**Mr. Tim Cross** began a detailed response to the citizen comments.

**Mr. Ptasznik** noted that the Commission had received a number of citizen comments in writing and during this public hearing about this complex and important matter. He noted the County spent over a year developing the 2025 Comprehensive Plan, offering numerous opportunities for citizen involvement, and tonight many had expressed their concerns and their needs based on the rezoning proposals that resulted from the Plan. He suggested the Commission consider convening a work session to deliberate the comments received and how best to proceed.

**Mr. Barba** moved to request staff to schedule a Planning Commission work session to consider Application No. ZM-104-06. The motion passed unanimously by roll call vote (6:0, Ms. Conner absent).

**Mr. Carter** said he would like to allay the concerns or misconceptions expressed by several citizens about the ability to rebuild on their properties after a home or structure was destroyed by actions outside the owners' control. A single-family residence is allowed by right on an RR- or RC-zoned property. If at the time it was destroyed it did not meet setback requirements in the district in which it was located, the Zoning Ordinance provides that it can be rebuilt within two years of the destruction; after two years, the owner would be required to meet the setback requirements in order to rebuild. He added there also are numerous opportunities to allow a house to be reconstructed with modified setbacks that can be authorized administratively, without special approvals. The key, he said, is that a single family detached residence would be a permitted use and not a nonconforming use. He encouraged anyone with questions about those procedures to call the Planning Division for clarification.

**Mr. Davis** said the staff would make every effort to meet with citizens and address their concerns. He also said that his experience in the development and commercial real estate appraisal professions indicated that a GB designation is more valuable for a property owner than the IL designation; to be rezoned from IL to GB should not, therefore, be considered downzoning. While the Commission is willing to listen and satisfy the property owners, he said, the County has a responsibility to consider the environment, setback requirements, the Chesapeake Bay Act and numerous other issues that might restrict land uses.

**Mr. Barba** agreed it was a complex issue that apparently could not be resolved in a single meeting. He encouraged citizens who still have concerns to make their views known to the Commission and staff and indicated that zoning is designed to protect property and increase its value.

**Chair Ptasznik** thanked all for attending. He said the Commission might find it necessary to hold more than one work session on this application before it forwards a recommendation to the Board.

**Mr. Hamilton** expressed concern about any misconception about opportunities for input into the rezoning process. He reiterated that well-publicized public meetings for the Comprehensive Plan took place over a period of more than 18 months, at more than 20 venues around the County, in an effort to

make it an inclusive process. He commended the citizens who spoke at this meeting and encouraged them to stay involved

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## **RECESS/RECONVENE**

**Chair Al Ptasznik** called a recess at 8:19 PM and reconvened the meeting at 8:28 PM.

## **PUBLIC HEARINGS - continued**

**Application No. PD-18-06, Mid-Atlantic Communities, LLC:** Request to amend the York County Zoning Map, pursuant to Section 24.1-362 of the York County Zoning Ordinance, by reclassifying from R20 (Medium-Density Single Family Residential) and GB (General Business) to PD (Planned Development) approximately 12.5 acres of land located at 113 Battle Road at the southeast quadrant of the intersection of George Washington Memorial Highway (Route 17) and Battle Road (Route 718). The property is further identified as Assessor's Parcel No. 24-56B and a portion of Assessor's Parcel No. 24-81B. The proposed development would consist of 49 townhouses and 19 condominium units combined with approximately 34,500 square feet of retail/office space. The Comprehensive Plan designates this area General Business along Route 17 and Medium Density Residential to the rear.

**Ms. Amy Parker**, Senior Planner, summarized the staff report dated July 5, 2006. Concerns raised included commercial and residential area ratios; traffic circulation, emergency vehicle access, and parking. Ms. Parker noted that the basic layout and design were acceptable and appropriate for a mixed-use development and the staff recommended approval through the adoption of proposed Resolution No. PC06-19, which included conditions relative to architectural design, timing of commercial construction, parking, and commercial/residential floor area ratios. Ms. Parker said the applicant submitted draft proffers to which staff recommended revisions, but no signed proffers had been received from the applicant. Ms. Parker requested that the County Attorney advise the Commission of the particular circumstances concerning the absence of signed proffers.

**Mr. Barnett** noted that proffers submitted in draft form are not proffers until they are signed. If the Commission thought the rezoning application made sense, provided that the proffers were eventually signed and submitted as presented in draft form, the recommendation could be conditional to recommend approval provided that final proffers are submitted as presented.

**Mr. Abel** inquired of the staff rationale for recommending a phasing requirement for the residential and commercial aspects of construction. **Ms. Parker** said the phasing requirement intended to ensure the commercial development was built concurrently with the residences, and that the development did not become all residential units. **Mr. Abel** asked if the staff was concerned that construction would begin on one aspect, such as residential, and then be abandoned before the commercial buildings were constructed. **Ms. Parker** said that without the scheduling provisions the County would have no assurance as to when the commercial mix would be constructed.

**Mr. Abel** inquired about the recommendation of vehicular access from Battle Road. He believed vehicular traffic could be a nuisance for the convalescent center and, while a connection to Battle Road

would be nice, the Fire Chief indicated that access from the Patriot Square side was acceptable. **Ms. Parker** said the vehicular access via Battle Road was recommended as a method of mitigating traffic problems on Route 17. The residual GB - General Business property does not have automatic access to Route 17, and the Battle Road connection would alleviate traffic on Route 17 when that portion of the property was developed.

**Mr. Ptasznik** asked if the retention pond was adequate to handle drainage. **Ms. Parker** said the Department of Environmental and Development Services had reviewed the preliminary drainage plan submitted with the application and indicated it appeared to be adequate.

**Mr. Ptasznik** noted the applicant was opposed to the Battle Road connection recommended by staff. **Ms. Parker** said the staff was concerned about the traffic impact to Route 17 with this development and believed a connection at Battle Road would be better for the current development and future development of the remaining GB property fronting on Route 17.

**Mr. Barba** asked if the Department of Fire and Life Safety (FLS) was satisfied with access for emergency vehicles. **Ms. Parker** noted the plan as submitted does not provide adequate turnaround space for emergency vehicles and revisions would be needed for access design, as well as some adjustments in townhouse area to provide access around the buildings.

**Chair Ptasznik** opened the public hearing.

**Mr. Paul Garman**, 109 Chisman Point Road, Seaford, spoke for the applicant, Mid-Atlantic Communities. He said the applicant would address all of the FLS issues. Mr. Garman referred to the ongoing work of the Mixed-Use Development Committee, which had presentations from several professional land planners who had stressed the necessity for flexibility for a project to be successful. Mr. Garman said the applicant and staff were divided on two major issues: Vehicular and pedestrian access from Battle Road, and the development schedule recommended by staff.

With regard to access from Battle Road, Mr. Garman stated the owner of the Battle Road property, Virginia Health Services, does not want the property encumbered by a roadway in the event of an opportunity for future sale or an expansion of the present use. He said the applicant had worked out an agreement with the Fire Chief to have two emergency entrances.

Regarding the development schedule, Mr. Garman said the applicant/developer could build the infrastructure, but needed proceeds from sales of the residential units to provide funding for the commercial properties.

Mr. Garman noted the draft proffers submitted to the County included a development schedule, but the applicant no longer wanted to offer such a proffer.

**Mr. Barba** asked why the corner lot was not included in the plan. The lot is zoned GB and could provide access to the proposed development. **Mr. Garman** said it is not a part of the project and referred the question to Mr. Lamont Myers for further clarification.

**Mr. Lamont Myers**, 108 Pheasant Watch, Mid-Atlantic Communities, said Virginia Health Services did not want the parcel encumbered and the applicant did not purchase it. If the issue of staff concern

is traffic on Route 17, he pointed out that any traffic using a Battle Road connection would end up on Route 17.

**Mr. Abel** inquired if the applicant was willing to adhere to the proposed architectural conditions proposed by staff. **Mr. Garman** indicated that they had no objection to the recommendation.

**Mr. Staton** inquired about a redesign of the commercial buildings so that vehicles would not have to drive completely around the buildings to park. **Mr. Garman** introduced Mr. John Hopke to address the concerns.

**Mr. John Hopke**, Hopke and Associates, Williamsburg, said the concept evolved around streetscapes rather than a typical strip shopping center. He said the proposed traffic and parking plan required patrons to park their vehicles and walk around the development. **Mr. Staton** thought the current design would be a detriment to the use of the facilities.

**Mr. Myers** said the applicant would not be opposed to reconsidering the vehicle access design.

**Mr. Brent Sedler**, 1023 Marlbank Drive, lives on the corner of Battle Road and believed he would be affected by the proposed development. He believed the proposed high-density housing had the potential to affect traffic, home values and crime rates in the area and those issues were not being addressed. He said not all of the Marlbank Cove and Settlers Crossing property owners had been notified of this public hearing and proposed that the Commission defer any decision until a letter of notification was sent to every property owner in those subdivisions.

**Ms. Michelle Hudgins**, 110 Battle Road, was opposed to the development because it was very close to her property. She said there is enough traffic already on Battle Road. York County is expected to be quiet and safe, and the additional traffic and cut-through to Patriot Square would be a safety issue. Ms. Hudgins said her concerns would remain the same even if no connection were provided between the proposed development and Battle Road.

**Mr. Matthew Hobbs**, 24 Striding Ridge Court, Durham, NC, representing Triangle VIII, LP, managing agent for Patriot Square Shopping Center, spoke in favor of the development.

**Mr. Raymond Schmidt**, 106 Allen Harris Drive, was concerned about high-density housing in proximity to his neighborhood. He noted concerns with high-density housing, increased traffic, greater number of children, and decreased property values. He noted that there were many properties on Route 17 that were currently listed for lease and thought that those properties should be occupied before more commercial development is undertaken.

**Mr. Myers** said the property in question is the last “empty palette” available on Route 17 offering an opportunity for building something extraordinary. He said that housing in the vicinity is high quality but believed a high-end townhouse project was needed, and considered the project to be a worthy entrance to Yorktown.

There were no others who wished to speak, and **Chair Ptasznik** closed the public hearing.



**Mr. Barnett** addressed the Commission with regard to County authority to impose a condition requiring the Battle Road connection. The County Attorney's position is that PD (Planned Development) rezonings are, for all practical purposes, another form of a special use permit under which a locality can impose reasonable development conditions. He disagreed with the developer's point of view that this would be a requirement for an "off-site" improvement. The property in question is a part of the application. The fact that the property would be subdivided off apart from the portion sold to Mid-Atlantic would not preclude a condition requiring the access connection to the proposed development.

**Mr. Davis** noted this application could be a test for the County as it was its first mixed-use development. He recommended that the County avoid placing timing requirements on the project, and suggested other methods such as bonding for addressing the issue.

**Mr. Barba** indicated he was uncomfortable downzoning property from GB because it effectively limited commercial development possibilities. He thought the commercial portion of the proposal would fit well with Patriot Square.

**Mr. Abel** believed this relatively small development appears to be a good first step into mixed-use development for the County. He mentioned possible other uses for the property might be an extension of Patriot Square, a parking lot, or a strip mall and believed this application to be the right size for its location. He did not support the proposed development schedule.

**Mr. Hamilton** concurred with Mr. Abel's comments. He believed the proposal represented a good use of the land. He recommended turning the commercial buildings so vehicles would not have to drive around the building to get to the parking. He supported approval with the caveat that staff obtain and review signed proffers before submitting the application to the Board of Supervisors.

**Mr. Station** agreed with most of the Commissioners' remarks but he did not support Battle Road as an access road.

**Mr. Ptasznik** concurred with the comments of the Commissioners including Mr. Station's recommendation to remove Battle Road as an access, and to require signed proffers addressing those issues. He noted the timing issue needed to be resolved.

**Mr. Carter** clarified the staff position on development timing. He explained how the ratios were determined in the absence of any existing mixed-use standards to follow. He recognized the Commission's concerns about rezoning land from commercial to residential use but noted that some opportunity for flexibility was in the staff proposal. Mr. Carter expressed his strong opinion about the issue of timing because there can be no mixed-use project without a concurrent mix of commercial and residential uses. Without a timing condition, there is nothing to compel the developer to develop the commercial portion of the project. He noted the developer's intent to market the townhouses to a separate developer, which risks the townhouses being built without the commercial aspect. Mr. Carter strongly recommended a provision in the proposal that would give some assurance that there would be a commercial component to the project that would be completed at the same time as the townhouses are completed.

**Mr. Ptasznik** re-opened the public hearing to allow the applicant to speak.

**Mr. Paul Garman** said the developer could work with the percentages recommended by staff, which he agreed would work in this case but did not think it would work for a large mixed-use case.

**Mr. Davis** said the issue appeared to be that the County wants to be assured that the commercial component is going to be built, but the applicant might not be able to obtain financing if the project schedule was approved as the County proposes.

**Mr. Myers** reiterated that the majority of the residential sales are needed to provide financing for the commercial units to be built. He said bonding was not workable. He assured that the commercial infrastructure would be in place, the pad sites readied, the architectural drawings completed, and site plans approved, all of which he said would require a great deal of time and money.

**Mr. Carter** reiterated the importance of timing for building the commercial space. Some of the mixed-use areas identified in the Comprehensive Plan are very large parcels compared to this relatively small project. If a larger project with hundreds of residential units were built in the future that significantly impacted the schools, for instance, the commercial component would be needed to help defray the financial burden on the County to support the schools. It is likely, he said, that the subject application would set the precedent for future mixed-use developments. While the applicant's concerns relate to financing the project, the County's concerns are related to a possible inundation of residential properties hitting the market before adequate commercial developments are in place to support County services. He strongly recommended a schedule for development as the method to ensure that would not happen with this or future mixed-use developments.

**Mr. Davis** asked if the developer would be willing to perform all of the site work, including parking, landscaping and the commercial pad sites in preparation for a builder. **Mr. Myers** did not know.

**Mr. Carter** firmly recommended that some commercial be built before all of the residential is built.

**Mr. Barba** acknowledged the Commission's responsibility to the success of the project.

**Mr. Carter** reiterated the need for linkage of residential and commercial development to prevent all of the residential from being built before any commercial is built. He noted that in Port Warwick and New Town, the commercial and residential components were built concurrently.

**Mr. Ptasznik** closed the public hearing.

**Mr. Abel** moved to adopt Proposed Resolution PC06-19(R), omitting Condition No. 3, Development Schedule, and omitting Condition No. 4(d), Streets and Circulation, to eliminate one Battle Road connection; and requiring signed proffers as recommended by staff.

Resolution No. PC06-19(R)

On motion of Mr. Abel, which carried 5:1 (Mr. Barba dissenting, Ms. Conner absent), the following resolution was adopted:

A RESOLUTION TO RECOMMEND APPROVAL OF A 12.46-ACRE PLANNED DEVELOPMENT AT 133 BATTLE ROAD CONSISTING OF A MIXED-USE DEVELOPMENT OF 49 TOWNHOUSES AND 19 CONDOMINIUM UNITS COMBINED WITH APPROXIMATELY 34,500 SQUARE FEET OF RETAIL/OFFICE SPACE

WHEREAS, Mid-Atlantic Communities LLC has submitted Application No. PD-18-06, which seeks to amend the York County Zoning Map by reclassifying from GB (General Business) and R20 (Medium-density Single-family Residential) to PD (Planned Development) approximately 12.46 acres of a 24.2-acre site for the purpose of establishing a mixed-use development located at 133 Battle Road at the southeast quadrant of the intersection of George Washington Memorial Highway (Route 17) and Battle Road (Route 718) and further identified as Assessor's Parcel No. 24-56B and a portion of Assessor's Parcel No. 24-81B; and

WHEREAS, said application has been forwarded to the York County Planning Commission in accordance with applicable procedure; and

WHEREAS, the Planning Commission has conducted a duly advertised public hearing on this application; and

WHEREAS, the Commission has carefully considered the public comments with respect to this application;

NOW, THEREFORE, BE IT RESOLVED by the York County Planning Commission this the day 12<sup>th</sup> of July, 2006, that Application No. PD-18-06 be, and it is hereby, transmitted to the York County Board of Supervisors with a recommendation of approval to amend the York County Zoning Map by reclassifying from GB (General Business) and R20 (Medium-density Single-family Residential) to PD (Planned Development) approximately 12.46 acres of a 24.2-acre site for the purpose of establishing a mixed-use development located at 133 Battle Road at the southeast quadrant of the intersection of George Washington Memorial Highway (Route 17) and Battle Road (Route 718) and further identified as Assessor's Parcel No. 24-56B (GPIN Q09d-4122-0113) and a portion of Assessor's Parcel No. 24-81B (Q09d-3894-0486) subject to the following conditions:

1 General Layout, Design, and Density

- a) A site plan, prepared in accordance with the provisions of Article V of the Zoning Ordinance, shall be submitted to and approved by the Department of Environmental and Development Services, Division of Development and Compliance prior to the commencement of any land clearing or construction activities on the site. Except as modified herein, said site plan shall be in substantial conformance with the conceptual plans titled "Site Plan, Yorktown Green, Yorktown, Virginia" prepared by Hopke & Associates, Inc, dated June 28, 2006 and received by the Planning Division June 29, 2006, building elevations (three sheets) titled "Yorktown Green," prepared by Hopke & Associates, Inc., dated June 23, 2006 and received by the Planning Division June 22, 2006, and "Master Plan, Yorktown Green" prepared by C.E. Newbaker Surveying and Planning Inc., dated 4/26/06, revised 6/28/06 and received by the Planning Division June 29, 2006.

- b) Except as modified herein, architectural design of all buildings shall be in substantial conformance with the building elevations submitted by the applicant and titled "Yorktown Green, Yorktown, Virginia" prepared by Hopke & Associates, Inc, dated June 23, 2006 and received by the Planning Division June 22, 2006, copies of which shall be kept on file in the York County Planning Division.
- c) Architectural design of buildings shall be in conformance with standards contained in Zoning Ordinance Section 24.1-378(d), Route 17 Corridor Overlay District. In addition to any modifications necessary to comply with those standards, the building architecture for both the mixed-use structures and the townhouse rows shall be modified so as to provide variation in the height or alignment of the longitudinal ridgeline of each structure, or to include some other architectural feature or treatment to mitigate the continuous ridgeline treatment depicted on the conceptual drawings.
- d) The maximum number of residential units shall be 68. The maximum number of townhouse units shall be 49. Unit Nos. 50 through 58 as shown on the above referenced master plan shall be commercial use on the ground floor and residential use on the upper floor(s). The first six units within the mixed-use commercial buildings, located on either side of and closest to the development's entrance from Route 17 (three units on each side of the drive aisle), shall be entirely commercial use.
- e) The maximum building height for mixed-use commercial buildings shall be fifty feet (50') and for residential buildings it shall be forty feet (40').
- f) The development may be identified by a single monument-style sign located along the Route 17 frontage. Said sign shall not exceed sixty-four (64) square feet in area or ten (10) feet in height. Not more than four (4) individual commercial tenants shall be identified on the development identification sign and the area devoted to individual tenant identification shall not exceed 40% of the total sign face. Each commercial tenant space within the project shall be entitled to one marquee or canopy sign not exceeding 3 square feet in area at each customer entrance. Wall signage shall be permitted at a ratio of one (1) square foot per linear foot of tenant space building width for each face of the building with a customer entrance. Wall signage allowances shall not be transferable from one building face to another.
- g) Free standing and building-mounted lighting shall be full cut-off fixtures that are shielded and directed downward at a 90-degree angle to the ground to prevent off-site illumination. Illumination levels shall not exceed 0.5 foot candle at the right-of-way line for Route 17. All lighting schemes and lighting fixtures shall be consistent with the lighting recommended by the Illumination Engineering Society of North America (IESNA). A lighting plan indicating manufacturer's specifications for all fixtures and illumination levels for the development site shall be submitted for review and approval by Environmental and Development Services at time of application for site plan approval.
- h) Minimum required parking for the commercial portion of the development shall be one space for every 250 square feet of commercial floor area. Minimum parking ratios for the residential components of the project shall be: condos/flats – 1.5 spaces per unit, plus 1 space for every three (3) units for visitor parking; townhouses – 2 spaces per unit, plus 1 space for every three

(3) units for visitor parking. Visitor parking shall be appropriately and conveniently dispersed throughout the residential portions of the project.

- i) All commercial parking areas shall be screened from view of Route 17 with evergreen plantings having a minimum mature height of three (3) feet. Landforms, supplemented with appropriate landscaping, may be used to achieve the required screening effect.
- j) Landscaping along the Route 17 frontage of the development shall meet minimum planting standards for a 45-foot greenbelt pursuant to Zoning Ordinance Section 24.1-245(c).
- k) Within the townhouse portion of the development there shall be a minimum twenty foot (20') setback from the face of the garage to the closest edge of any street curbline or streetside sidewalk. The minimum setback of the remainder of the façade of the townhouse (excepting the garage) from the closest edge of any street curbline or streetside sidewalk shall be ten feet (10'). Such area shall be landscaped with grass, trees and shrubs.

## 2 Commercial/Residential Ratios

- a) The development shall maintain the following commercial/residential unit ratios:
  - Commercial – 3,000 square feet of commercial floor area per useable (excluding utility easements and wetlands) land acre
  - Residential – 500 square feet of commercial floor area per dwelling unit

## 3 Streets and Circulation

- a) Street lighting shall be provided at each street intersection and at other such locations determined by the subdivision agent to maximize vehicle and pedestrian safety. The design of the street lighting shall be consistent with the design and character of the development.
- b) The developer shall install a right-turn lane and taper on George Washington Memorial Highway as shown on the development plan. Design, including length and width of the taper, shall meet all applicable standards of Virginia Department of Transportation (VDOT).
- c) There shall be no on-street parking within the townhouse section of the development except where street pavement width equals or exceeds twenty-eight feet (28').
- d) The vehicular/sidewalk connection to the abutting shopping center (GPIN Q08b-4408-4590) shown on the referenced plans shall be constructed and completed, inspected by the County and opened to vehicular and pedestrian use prior to the issuance of the first Certificate of Occupancy for the townhouse section of the development.
- e) In accordance with Zoning Ordinance Section 24.1-252(b)(4), access to proposed Parcel A-2 from Route 17 shall be permitted provided that it is designed as a right-in-only driveway, or right-in/right-out if approved by VDOT, interconnecting with the circulation system in the mixed-use development and that it is located on or abutting the common parcel boundary between Parcels A-1 and A-2 as shown on the plat titled "Exhibit Plat of Parcel A-1 & Parcel

B, Property To Be Zoned PD Containing 542,659 sq. ft. or 12.458 Acres,” prepared by C.E. Newbaker Surveying and Planning, Inc., dated March 30, 2006, revised June 28, 2006 and received by the Planning Division on June 30, 2006.

- f) The private street system within the development and as required above shall be designed and constructed in conformance with Zoning Ordinance Section 24.1-361(f), Planned Development District; Special Design Standards.
- g) A revised traffic impact analysis with trip generation figures reflecting the revised mix of residential and commercial use shall be submitted for review and approval by Environmental and Development Services at time of application for site plan approval.

#### 4 Utilities and Drainage

- a) Public sanitary sewer service shall serve this development, the design of which shall be subject to approval by the County in accordance with all applicable regulations and specifications. The applicant shall grant to the County all easements deemed necessary by the County for the maintenance of such sewer lines.
- b) A public water supply and fire protection system shall serve the development, the design of which shall be subject to approval by the County in accordance with all applicable regulations and specifications. The applicant shall grant to Newport News Waterworks all easements deemed necessary for maintenance of such water lines.
- c) The development shall be served by a stormwater collection and management system, the design of which shall be approved by the County in consultation with VDOT and in accordance with applicable regulations and specifications. The property owners’ association(s) shall own and be responsible for the perpetual maintenance of all stormwater retention facilities serving the Planned Development and located within the project limits. This shall not preclude the use of cooperative arrangements for joint use of off-site stormwater management facilities.

#### 5 Open Space and Recreation

- a) The location and arrangement of open space shall be generally as depicted on the plan titled “Master Plan, Yorktown Green” prepared by C.E. Newbaker Surveying and Planning Inc., dated 4/26/06, revised 6/28/06 and received by the Planning Division June 29, 2006.
- b) Open space and recreation areas shall be developed in accordance with Zoning Ordinance Section 24.1-361(e). Common active/passive outdoor recreation areas shall include, at a minimum, the following facilities and amenities:
  - Gazebo
  - Picnic area
  - Walking trails
  - Benches
  - Fitness trail

- c) Indoor recreational amenities shall consist of, at a minimum, a 900-square foot ground-floor fitness center as shown on the development plan titled "Yorktown Green, Yorktown, Virginia" prepared by Hopke & Associates, Inc, dated June 23, 2006 and received by the Planning Division June 22, 2006. Said facility shall be available without additional charges or fees (i.e., in addition to normal Property Owner's Association dues) to all residents of the development and their guests. Said facility shall be completed and available to residents prior to the issuance of a building permit for the 25<sup>th</sup> townhouse unit.
- d) All common and public improvements within the development shall be subject to the standards governing timing, performance agreements, and surety requirements set forth in Sections 24.1-362(b)(3) and (4) of the Zoning Ordinance.
- e) The location and manner of development for the recreation area shall be fully disclosed in plain language to all home purchasers in this development prior to closing.
- f) Recreational facilities or improvements shall not be located within any wetland areas.
- g) All common open space and recreational facilities shall be protected and perpetual maintenance guaranteed by appropriate covenants as required in the York County Zoning Ordinance and submitted with development plans for the project.

6 Proffered Conditions

The reclassification shall be subject to the conditions listed in the draft proffer statement titled "Proffers, Yorktown Green," dated 6/29/06 with the exception of Proffer No. 7 except as modified herein.

7 Restrictive Covenants

Prior to final plan approval, the applicant shall submit restrictive covenants for review and approval by the County Attorney for their consistency with the requirements of Section 24.1-497 of the Zoning Ordinance.

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**Application No. ZT-103-06, York County Planning Commission:** Consider amendments to Section 24.1-407 of the York County Zoning Ordinance (Chapter 24.1, York County Code) to revise the performance standards relating to accessory apartments as follows: to increase the maximum matter-of-right size for accessory apartments to 800 square feet or 35% of the principal building floor area, whichever is less; to allow detached accessory apartments as a matter-of-right in the following zoning districts and with the following minimum lot sizes, respectively: RC – 5 acres, RR – 1 acre, R20 – 40,000 square feet, and R13 – 40,500 square feet; to require special use permit authorization for detached accessory apartments on properties of lesser size in those zoning districts; and, to provide opportunities for approval by special use permit of attached or detached accessory apartments of up to 1,000 square feet or 49% of the principal building floor area, whichever is less.

**Mr. Mark Carter**, Assistant County Administrator, presented a summary of the staff report dated June 27, 2006 in which the staff recommended approval. Mr. Carter offered to answer questions of the members; there were no questions.

Chair Ptasznik opened the public hearing. Hearing no one, he closed the public hearing.

**Mr. Barba** commended Mr. Carter and the staff for their work on the application and moved adoption of Resolution No. PC06-17.

Resolution No. PC06-17

On motion of Mr. Barba, which carried 6:0 (Ms. Conner absent), the following resolution was adopted:

A RESOLUTION TO RECOMMEND APPROVAL OF APPLICATION NO. ZT-103-06 TO AMEND SECTION 24.1-407, STANDARDS FOR ACCESSORY APARTMENTS, OF CHAPTER 24.1, ZONING (YORK COUNTY CODE) TO EXPAND THE OPPORTUNITIES FOR ACCESSORY APARTMENTS TO BE LOCATED ON CERTAIN RESIDENTIAL PROPERTIES AS A MATTER OF RIGHT

WHEREAS, Section 24.1-407 of Chapter 24.1, Zoning, of the York County Code sets forth standards and conditions applicable to the establishment of accessory apartments in conjunction with single family detached residential uses; and

WHEREAS, the Planning Commission has determined that adjustments in the existing provisions should be considered in order to provide additional opportunities for such apartments to be established as a matter of right rather than by special use permit and has sponsored Application No. ZT-103-06; and

WHEREAS, the Commission has conducted a duly advertised public hearing and has determined that approval of the proposed amendments would be consistent with good zoning practice;

NOW, THEREFORE, BE IT RESOLVED by the York County Planning Commission, this the 12th day of July, 2006, that it does hereby forward Application No. ZT-103-06 to the Board of Supervisors with a recommendation for approval of amendments to Section 24.1-407 of the Zoning Ordinance, to read as set forth below:

**Sec. 24.1-407. Standards for accessory apartments in conjunction with single-family detached dwellings.**

- (a) Not more than one (1) accessory apartment may be permitted in conjunction with a single-family detached dwelling.
- (b) Accessory apartments may be considered and authorized in accordance with the following schedule/procedures:

- 1. Accessory apartments not exceeding ~~800~~~~600~~ square feet or ~~35%~~~~25%~~ of the floor area of the principal structure, whichever is less, and attached to the principal structure (the single-



family detached dwelling unit ~~unit~~), shall be permitted as a matter of right in the RC, RR, R20 and R13 zoning districts. ~~Attached accessory apartments in excess of the 600 square feet / 25% limitation, but not exceeding 800 square feet or 35% of the floor area of the principal structure, whichever is less, may be authorized by special use permit in the RC, RR, R20 and R13 zoning districts.~~

2. Accessory apartments proposed in detached structures in the RC, RR, R20 or R13 zoning districts shall be permitted as a matter of right if the subject property meets the following minimum area requirements and the size of the accessory apartment does not exceed the 800 square feet or 35% of the principal structure floor area:

<u>District</u>	<u>Minimum Area</u>
RC	5 acres
RR	1 acre
R20	40,000 square feet
R13	40,500 square feet

Detached accessory apartments proposed on properties of lesser area shall require authorization by special use permit, and shall not exceed 800 square feet or 35% of the principal structure floor area, whichever is less.

3. ~~Notwithstanding the above limitations, on property in the RC or RR zoning districts which is at least twice as large as the applicable conventional development (i.e., not a “cluster” development) minimum lot size for that district/property, or on property in the R20 zoning district which is at least four times as large, an attached or detached accessory apartment shall be permitted as a matter of right provided that it does not exceed 800 square feet or 35% of the principal structure floor area, whichever is less.~~ Upon authorization by special use permit, the maximum size of an accessory apartment, whether attached or detached, on ~~such~~ properties meeting the above noted minimum area thresholds may be increased to 1,000 square feet or 49% of the floor area of the principal structure, whichever is less.
- (c) Access to an accessory apartment whether in the principal structure or in a detached accessory structure, shall be designed so that the premises continues to have the appearance from the principal street frontage of one single family detached dwelling unit and its customary accessory structures. No new entrance to accommodate an accessory apartment shall be installed on the front façade (facing the street) of an existing or proposed principal structure. The applicant shall be responsible for submitting sketches and/or plans to demonstrate compliance with this condition.
  - (d) For the purposes of determining allowable floor area for an accessory apartment, all “habitable space,” as defined and determined under the terms of the Building Code, shall be included in the calculation and shall be considered a part of the apartment. Space which does not meet the “habitable” criteria shall not be counted in floor area calculations for the accessory apartment.
  - (e) Notwithstanding the provisions of Section 24.1-273(c) of this chapter, for the purposes of this section, the term “attached” shall be construed to require connection by enclosed, heated, habitable space. Structures which are merely attached by a wall or roof construction, or which

are within ten (10) feet of the principal structure shall not be considered “attached.”

- (f) The maximum number of bedrooms in an accessory apartment shall be one (1).
- (g) Adequate provisions shall be made for off-street parking of motor vehicles in such a fashion as to be compatible with the character of the single-family residence and adjacent properties.
- (h) Approval of accessory apartments shall be contingent upon prior certification by the health department that any on-site water supply and sewage treatment facilities are adequate to serve the total number of bedrooms proposed on the property (principal and accessory).
- (i) The accessory apartment shall be occupied only by family members or guests of the occupant of the single-family dwelling or by a bona fide medical/health caretaker or domestic employee of the occupant of the single family dwelling. The apartment shall not be offered to the general public (i.e., non-family members / non-guests) for rental or other occupancy arrangements.
- (j) All utilities serving the accessory apartment (e.g., electric, water, sewer, gas) shall be registered to the occupant of the principal residence. Registration/billing of utility accounts to different parties (e.g. the occupant of the principal residence and the occupant of the accessory apartment) shall be prohibited, even if separate meters for the principal residence and accessory apartment are used.
- (k) Prior to issuance of a Building Permit for the accessory apartment the property owner shall prepare and record with the Clerk of the Circuit Court, at his expense, a deed restriction on the property stipulating that the accessory apartment will be used, occupied and maintained in accordance with the above-noted restrictions and such others as may be prescribed by the York County Board of Supervisors in approving the special use permit. Such restrictions shall not be voided, in whole or in part, unless specifically authorized by the County Administrator in recognition of some subsequent change in the zoning restrictions applicable to accessory apartments or upon removal of the accessory apartment through demolition or alterations to the structure.

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## **OLD BUSINESS**

There was no old business.

## **NEW BUSINESS**

### **Election of Officers For 2006-2007**

County Attorney James E. Barnett, Jr. presiding, Mr. Hamilton moved to elect Mr. Al Ptaszniak chair for 2006-07 and Mr. Ptaszniak was reelected unanimously (6:0, Ms. Conner absent). Mr. Hamilton moved to elect Mr. Barba vice chair for 2006-07, and Mr. Barba was reelected unanimously.

## **STAFF REPORTS**

Mr. Mark Carter referred to the Development Activity Report dated July 12, 2006 and offered to answer questions.

### **COMMITTEE REPORTS**

Mr. Ptasznik reported that the Mixed Use Development Committee has prepared a draft ordinance.

### **COMMISSION REPORTS AND REQUESTS**

Mr. Hamilton asked about the work session for Application No. ZM-104-06 and Mr. Ptasznik asked the staff to schedule it. He indicated the Commission might decide to hold more than one work session to discuss the application before it makes a recommendation to the Board of Supervisors.

### **STAFF REPORTS**

Mr. Carter reported on recent actions by the Board of Supervisors.

### **FUTURE BUSINESS**

Mr. Carter advised of future applications.

### **ADJOURN**

The meeting was adjourned at 10:20 p.m.

**SUBMITTED:**

\_\_\_\_\_  
Phyllis P. Liscum, Secretary

**APPROVED:**

\_\_\_\_\_  
Alfred E. Ptasznik, Jr., Chair

**DATE:**

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